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STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

SECRETARY OF STATE

IN THE MATTER OF:

DAVID B. SMITH

RESPONDENT

) DIVISION OF WATER  
) POLLUTION CONTROL  
)  
)  
) OGC CASE 07-0170  
) DOCKET # 04.30-096929A

**ORDER BY CONSENT**

This Order By Consent is made and entered into by and between the Tennessee Department of Environment and Conservation (hereinafter "TDEC") and David B. Smith, (hereinafter "the Respondent") to resolve the Director's Order issued by Paul Davis on August 3, 2007; to avoid costly litigation; and upon Respondent Smith's desire to fully cooperate with the State of Tennessee in this matter. As evidenced by the signatures of the parties below the parties stipulate and agree as follows:

**PARTIES**

**I.**

James H. Fyke is the duly appointed Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "Department").

**II.**

David B. Smith, (hereinafter "the Respondent") is the owner of the residential property located on Prospect Road in Giles County, Tennessee (hereinafter "the site").

Service of process may be made on the Respondent at 4080 Prospect Road, Prospect, Tennessee, 38477.

## **JURISDICTION**

### **III.**

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 et seq., the Water Quality Control Act, (hereinafter the "Act") has occurred, or is about to occur, the commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the Official Compilation Rules and Regulations of the State of Tennessee, Chapters 1200-4-3 and 1200-4-4 ("Rule"). Pursuant to T.C.A. §69-3-107(13), the commissioner may delegate to the director of the Division of Water Pollution Control (hereinafter the "division") any of the powers, duties, and responsibilities of the commissioner under the Act.

### **IV.**

The Respondents are "persons" as defined at T.C.A. §69-3-103(20) and, as herein described, have violated the Act.

## V.

The unnamed tributary to Richland Creek, referred to herein, is "waters of the state", as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state are classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, "Use Classifications for Surface Waters," is contained in the *Official Compilation of Rules and Regulations for the State of Tennessee*. Accordingly, these waters are classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife.

## FACTS

### VI.

On July 6, 2007, division personnel conducted a complaint inspection at the site. Automobile oil waste was observed in the unnamed tributary to Richland Creek, downstream of the Respondent's property. Further inspection revealed that the oil waste has been deposited into the creek through a drain located in the top of a culverted portion of the creek that passes through the Respondent's property near a garage. Oil waste, rags, tire ramps and other related materials were observed to still be present in the Respondent's garage area. Oil waste was still present in and around the opening to the drain above the creek, clearly indicating that it was the source of the contamination.

### VII.

The Division issued Director's Order and Assessment 07-0170 on August 3, 2007. The Division received a timely appeal from the respondent.

## **VIOLATIONS**

### **VIII.**

By causing a condition of pollution to the unnamed tributary of Richland Creek as described herein, the Respondent has violated T.C.A. Section 69-3-114(a).

T.C.A. §§69-3-114(a) states:

(a) It shall be unlawful for any person to discharge any substances into the waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in §69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

## **ORDER**

WHEREFORE, PREMISES CONSIDERED, the parties hereby agree that:

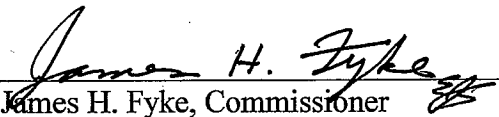
1. The Respondent shall hereafter comply with the Tennessee Water Quality Control Act and all division Rules.
2. The Respondent must submit documentation of appropriate automobile oil recycling techniques for a period of two years. This documentation must be either receipts from commercial oil changing facilities, such as Jiffy Lube, or receipts from an Oil Collection Center. Documentation must be submitted on a quarterly basis with the timeline beginning on the first day of March 2008. The final documentation shall be submitted on first day of March 2010.
  - a. If and only if, Respondent fails to submit documentation of appropriate automobile oil recycling techniques, the Respondent shall pay a civil

penalty of ONE THOUSAND TWO HUNDRED AND FIFTY DOLLARS (\$1,250.00) to the division within thirty (30) days of default.

b. If and only if, Respondent fails to submit documentation of appropriate automobile oil recycling techniques, the Respondent shall pay damages of FIVE HUNDRED SIXTEEN DOLLARS AND THIRTY NINE CENTS (\$516.39) to the division within thirty (30) days of default.

3. This order will be effective when signed by the Respondent. Upon the effective date of this order, Director's Order and Assessment 07-0170 referenced in paragraph VII is dismissed.

Issued by the Commissioner of the Tennessee Department of Environment and Conservation on this 29<sup>th</sup> day of January, 2008.

  
James H. Fyke, Commissioner  
Department of Environment and Conservation

**NOTICE AND WAIVER OF RIGHT TO APPEAL**

By agreeing to this Order By Consent, David B. Smith. waives his statutory right under T.C.A. Section 69-3-109 to seek review of this assessment.

**APPROVED FOR ENTRY:**



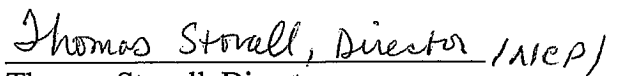
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David B. Smith, Pro-Se  
4080 Prospect Road  
Prospect, Tennessee, 38477.  
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Entered in the Office of the Secretary of State, Administrative Procedures

Division, this 14 day of February, 2008.

  
Thomas Stovall, Director  
Administrative Procedures Division